



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 215**

April 23, 1998 – Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to amend* 346.935 (1), 346.935 (2), 346.935 (3) and 346.935 (4) (b); and
2 *to create* 134.63 and 941.315 of the statutes; **relating to:** nitrous oxide and
3 providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 134.63 of the statutes is created to read:

5 **134.63 Nitrous oxide; restrictions on sales; records of certain sales;**
6 **labeling.** (1) In this section:

7 (a) “Deliver” or “delivery” means the actual, constructive or attempted transfer
8 of nitrous oxide or a nitrous oxide container from one person to another.

9 (b) “Nitrous oxide container” means any compressed gas container that
10 contains food grade or pharmaceutical grade nitrous oxide as its principal
11 ingredient.

1 **(2)** (a) Except as provided in par. (b), no person who engages in the retail sale
2 of cartridges of nitrous oxide may sell more than 24 cartridges in any single retail
3 transaction.

4 (am) Except as provided in par. (b), no person may, during any consecutive
5 48-hour period, engage in more than one retail purchase of nitrous oxide or any
6 nitrous oxide container.

7 (b) Paragraphs (a) and (am) do not apply to any of the following:

8 1. A retail sale to a bakery, restaurant, institutional food distributor or other
9 person engaged in the food service industry if the bakery, restaurant, distributor or
10 other person has an emergency business need for the cartridges.

11 2. Any retail sale to or retail purchase by a hospital, health care clinic or other
12 health care organization that uses nitrous oxide to provide medical or dental care.

13 3. A retail food establishment, as defined in s. 97.30 (1) (c).

14 **(3)** (a) Except as provided in sub. (5), every person in this state who delivers
15 nitrous oxide or any nitrous oxide container to another shall keep a register of all
16 deliveries of nitrous oxide or any nitrous oxide container. The register shall show the
17 name and complete address of the person to whom the nitrous oxide or nitrous oxide
18 container is delivered, the number of cartridges or other containers delivered, the
19 date of delivery and, if the delivery involves a retail sale under sub. (2) (b) 1., the
20 person's Wisconsin income tax identification number and the reason for needing
21 more than 24 cartridges of nitrous oxide or for making more than one purchase in a
22 48-hour period or both.

23 (b) A person required to keep a register under par. (a) shall preserve the register
24 on his or her business premises for 2 years in such a manner as to ensure permanency
25 and accessibility for inspection and shall permit inspection of the register at all

1 reasonable hours by state and local law enforcement agencies and by any state
2 agency, as defined in s. 16.61 (2) (d).

3 (c) No person required to keep a register under par. (a) may deliver nitrous
4 oxide or any nitrous oxide container to another person unless the person to whom the
5 nitrous oxide or nitrous oxide container is delivered presents an official identification
6 card, as defined in s. 125.085 (1).

7 (d) No person to whom nitrous oxide or any nitrous oxide container is delivered
8 may give a false name or address to a person required to keep a register under par.
9 (a).

10 (4) (a) Except as provided in sub. (5), no person may deliver a cartridge of
11 nitrous oxide to another unless the cartridge bears a label, stamp or tag that sets
12 forth in clearly legible and conspicuous form the following warning: "Nitrous oxide
13 cartridges are to be used only for purposes of preparing food. Nitrous oxide
14 cartridges may not be sold to persons under the age of 21. Do not inhale the contents
15 of this cartridge. Misuse of nitrous oxide can be dangerous to your health."

16 (b) Except as provided in sub. (5), no person may deliver a cartridge of nitrous
17 oxide to another unless the packaging in which the cartridge is enclosed is marked
18 with a label or other device that indicates the name and business address of the
19 person delivering the cartridge of nitrous oxide.

20 (5) Subsections (3) and (4) do not apply to a retail food establishment, as
21 defined in s. 97.30 (1) (c).

22 **SECTION 2.** 346.935 (1) of the statutes is amended to read:

23 346.935 (1) No person may drink alcohol beverages or inhale nitrous oxide
24 while he or she is in any motor vehicle when the vehicle is upon a highway.

25 **SECTION 3.** 346.935 (2) of the statutes is amended to read:

1 346.935 (2) No person may possess on his or her person, in a privately owned
2 motor vehicle upon a public highway, any bottle or receptacle containing alcohol
3 beverages or nitrous oxide if the bottle or receptacle has been opened, the seal has
4 been broken or the contents of the bottle or receptacle have been partially removed
5 or released.

6 **SECTION 4.** 346.935 (3) of the statutes is amended to read:

7 346.935 (3) The owner of a privately owned motor vehicle, or the driver of the
8 vehicle if the owner is not present in the vehicle, shall not keep, or allow to be kept
9 in the motor vehicle when it is upon a highway any bottle or receptacle containing
10 alcohol beverages or nitrous oxide if the bottle or receptacle has been opened, the seal
11 has been broken or the contents of the bottle or receptacle have been partially
12 removed or released. This subsection does not apply if the bottle or receptacle is kept
13 in the trunk of the vehicle or, if the vehicle has no trunk, in some other area of the
14 vehicle not normally occupied by the driver or passengers. A utility compartment or
15 glove compartment is considered to be within the area normally occupied by the
16 driver and passengers.

17 **SECTION 5.** 346.935 (4) (b) of the statutes is amended to read:

18 346.935 (4) (b) This section does not apply to passengers in a limousine or in
19 a motor bus who possess any bottle or receptacle containing alcohol beverages that
20 has been opened, on which the seal has been broken or the contents of which have
21 been partially removed or released if the vehicle is operated by a chauffeur holding
22 a valid license and endorsements authorizing operation of the vehicle as provided in
23 ch. 343 and is in compliance with any local ordinance or regulation adopted under
24 s. 349.24.

25 **SECTION 6.** 941.315 of the statutes is created to read:

1 **941.315 Possession, distribution or delivery of nitrous oxide. (1)** In this
2 section:

3 (a) “Deliver” or “delivery” means the actual, constructive or attempted transfer
4 of nitrous oxide or a substance containing nitrous oxide from one person to another.

5 (b) “Distribute” means to deliver, other than by administering.

6 **(2)** Whoever does any of the following is guilty of a Class A misdemeanor:

7 (a) Possesses nitrous oxide or a substance containing nitrous oxide with the
8 intent to inhale the nitrous oxide.

9 (b) Intentionally or otherwise inhales nitrous oxide.

10 **(3)** Whoever does any of the following is guilty of a Class D felony:

11 (a) Distributes or delivers, or possesses with intent to distribute or deliver,
12 nitrous oxide to a person who has not attained the age of 21.

13 (b) Distributes or delivers, or possesses with intent to distribute or deliver,
14 nitrous oxide or a substance containing nitrous oxide to a person aged 21 years or
15 older knowing or having reason to know that the person will use the nitrous oxide
16 in violation of sub. (2).

17 (c) Distributes or delivers to a person aged 21 years or older any object used,
18 designed for use or primarily intended for use in inhaling nitrous oxide at the same
19 time that he or she distributes or delivers nitrous oxide or a substance containing
20 nitrous oxide to the person.

21 **(5)** (a) Subsection (2) does not apply to a person to whom nitrous oxide is
22 administered for the purpose of providing medical or dental care, if the nitrous oxide
23 is administered by a physician or dentist or at the direction or under the supervision
24 of a physician or dentist.

